No. 10331

United States
Circuit Court of Appeals
For the Ninth Circuit.

JAMES A. JOHNSTON, Warden, United States Penitentiary, Alcatraz, California,

Appellant,

vs.

CECIL WRIGHT,

Appellee.

SUPPLEMENTAL
Transcript of Record

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

ROTARY COLORPRINT, 590 FOLSOM ST., SAN FRANCISCO

NAMES AND ADDRESSES OF ATTORNEYS

MR. CECIL WRIGHT,

No. 579, Alcatraz, California.
In Propria Personna.

MR. FRANK J. HENNESSY,

United States Attorney,
Northern District of California.

MR. A. J. ZIRPOLI,

Assistant United States Attorney,
Northern District of California.

Post Office Building,
San Francisco, California.

Attorneys for Appellant.

At a stated term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Tuesday the nineteenth day of January in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable Francis A. Garrecht, Circuit Judge, Presiding.

Honorable Clifton Mathews, Circuit Judge.

Honorable Albert Lee Stephens, Circuit Judge.

No. 10331

JAMES A. JOHNSTON, Warden, United States Penitentiary, Alcatraz, California,

Appellant,

vs.

CECIL WRIGHT,

Appellee.

ORDER GRANTING MOTION TO INCLUDE ADDITIONAL DOCUMENTS IN TRANSCRIPT OF RECORD, AND DENYING MOTION TO DISMISS

Upon consideration of the motion of appellee that additional documents be made a part of the certified transcript of record herein and counsel for appellant stipulating for inclusion of two prior petitions for writ of habeas corpus, being Nos.

23,581-S and 23,611-S in the District Court of the United States for the Northern District of California, Southern Division, as a part of the certified transcript of record, and good cause therefor appearing, It Is Ordered that such motion be, and hereby is granted as to such prior petitions for writs of habeas corpus, and the clerk of said District Court is hereby directed to transmit to this Court a certified copy of each of such petitions.

Upon consideration of the motion of appellee for dismissal of the appeal herein, and of the memorandum of appellant in opposition thereto, and good cause therefor appearing, It Is Ordered that such motion to dismiss be, and hereby is denied.

EXHIBIT B

In the District Court of the United States of America Within and for the Northern District of California, Southern Division, San Francisco

No. 23581-S

PAUPERS OATH

County of San Francisco,
State of California—Affidavit.

To Whom It May Concern:

The undersigned party, Cecil Wright, herein after referred to as the party of the first part, disposes and says he was fined in the sum of Ten Thousand Dollars, to be paid to the United States of America, said fine aforesaid having been imposed by the Honorable Judge Walter C. Lindley of the United States District Court, Eastern Division of Illinois, Danville.

That the party of the first part deposes and says that he has fulfilled the necessary requirements by serving a number of days totaling thirty in the United States Penitentiary, Alcatraz Island, California, under the supervision of James A. Johnston, Warden of the aforesaid penitentiary.

The party, Cecil Wright, party of the first part deposes and says that James A. Johnston, Warden of the United States Penitentiary, Alcatraz Island, California, to be referred to as the party of the second part. That the party of the first part is in the custody of the party of the second part and party of the first part is to pay a fine of ten thou-

sand dollars to the party of the second part, before the party of the first part is subject to discharge from prison on a judgment, No. 11032. The party of the first part deposes and says that he has satisfied the judgment No. 11032, by serving the sentence and a number of days totaling thirty over the date required on the sentence imposed in judgment No. 11032, and said service of sentence and number of days totaling thirty was completed under the custody of the party of the second part.

The party of the first part now deposes and says he is a pauper and was unable to pay the sum of ten thousand dollars to the party of the second part or furnish security therefore, and party of the first part has no assets to list herein.

That the party of the first part is now eligible for discharge from the custody of the party of the second part, on the outcome of a hearing for a [1*] Writ of Habeas Corpus to issue out of the District Court of the United States of America, Northern District, Southern Division, San Francisco, California; where the party of the first part is seeking his release from the custody of the party of the second part by Habeas Corpus.

(Signed) CECIL WRIGHT

Affiant and party of the first part.

Cecil Wright, Register Number 579 AZ has on deposit in the Prisoners' Trust Fund, the sum of $82.38.

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*Page numbering appearing at foot of page of original certified Transcript of Record.

Subscribed and sworn to before me a Notary Public this 22 day of September A. D. 1941.

Notary Public
E. S. MILLER
Associate Warden, U. S. P.,
Alcatraz Island, Calif.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths.

Filed in the District Court ....., A. D. 1941. [2]

In the District Court of the United States of America Within and for the Northern District of California, Southern Division, San Francisco

Civil Action H. C. No.....

CECIL WRIGHT,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden U. S. Penitentiary, Alcatraz, California,

Respondent.

PETITION FOR A WRIT OF HABEAS CORPUS

To:

The Honorable Martin I. Welch, United States District Court, Southern Division, San Francisco, California, at Chambers.

Now comes Cecil Wright, hereinafter referred to

as the petitioner, appearing in proper person and said petitioner waives the rights to counsel.

"Power of Judges to issue Writs of Habeas Corpus."

Your petitioner hereby respectfully submits the following statutes empowering your Honor to hear and consider this petition in Chambers, to wit:

"The several judges and justices of the said courts—within their respective jurisdiction, shall have power to grant Writs of Habeas Corpus, for the purpose of an inquiry into the cause of restraint of liberty."

(Compiled statutes of the United States, Sec. 1280)

(Revised statutes of the United States, Sec. 752)

(Act March 2nd. 1833, C. 57, Sec. 7, 4, Stat. 634)

(Act September 24th, 1789, C. 20 Sec. 14, 1 Stat. 81)

(Act April 10th. 1869, C. 22, Sec. 2, 16 Stat. 44)

(Act Feb. 5th. 1867, C. 28, Sec. 1, 14, Stat. 385)

(Act Aug. 9th. 1842, C. 257, Sec. 1, 5, Stat. 539)

"The power to issue the Writ may be exercised at Chambers" (Bennett vs. Bennett, D. C. Federal Cases, No. 1318).

1. The petitioner avers and alleges that he was indicted in the United States District Court, East-

ern Division of Illinois, Danville, hereinafter referred to as the Trial court at the May 1930 A. D., term of court thereof setting under Criminal Cause No. 11,032 and 11,074.

2. The petitioner avers and alleges that he was found guilty by a jury in criminal cause No. 11,032 and sentenced to a term of ten years and fined in the sum of ten thousand dollars. The petitioner alleges that in cause No. 11,032, he was convicted and sentenced on September 17, 1930, and said trial court did not defer or suspend the pronouncement of judgment and sentence. That said [3] judgment and sentence was passed on September 17, 1930, entered into the records and minutes of the court. That a warrant to convey dated September 17, 1930, issued under the hand and seal of the trial court attached to the aforesaid judgment and commitment, directing the said Marshal of the aforesaid district to deliver your petitioner herewith to the Warden or his keeper of the United States Penitentiary, Leavenworth, Kansas, to be confined therein for service of sentence imposed under cause No. 11,032—said sentences to run consecutively and to pay a fine in the sum of ten thousand dollars, that execution issue therefore and that the said petitioner stand committed to the said Penitentiary, until said fine shall have been fully paid.

3. The petitioner avers and alleges that a specification offset from the judgment in quotation marks states: "It is further ordered by the Court that the sentences herein imposed shall begin upon

the expiration of the sentences which the said defendants are now serving in the Southern Illinois Penitentiary". The petitioner alleges that this aforesaid specification was not passed upon the petitioner in open court. That the specification was entered after the petitioner was taken from the Court, and if such a specification had of been an instruction by the court upon pronouncement of sentence the aforesaid specification would appear in the judgment and would not appear as a footnote added to the judgment. The petitioner further alleges that in cause No. 11032, the court did not raise the question as to the said—petitioners past record The question of the petitioners' past record was not raised due to the fact that the petitioner did not take the witness stand to testify in his own behalf.

4. The petitioner avers and alleges that he was serving a sentence in the Southern Illinois Penitentiary prior to the conviction of September 17, 1930. That the sentence in the Southern Illinois Penitentiary, was an indeterminate sentence of not less than one year and no more than natural life, having been imposed on July 26, 1930, fifty two days prior to the conviction and sentencing in criminal cause No. 11032. The petitioner alleges that the sentence in the State Penitentiary did not have a definite release date, and therefore it would be to uncertain as to the beginning of the sentence imposed by the Federal Court in Criminal Cause No. 11032. That there is no date set for the beginning of the Federal sentence, otherwise than the date

of September 17, 1930. That the judgment and commitment is silent as to the commencement of the sentence on October 31, 1939, and there- [4] fore the petitioner alleges that the sentences should of started to run from the day of judgment and to be otherwise, would be dominating the petitioner's future life. That to start a sentence at some future date unknown to the court is to indefinite, and the petitioner further alleges the court could not post date the sentence after the sentence had began to run. That even the aforesaid specification mentioned as a footnote is without a meaning and does not hold any weight of authority as to the commencement of the sentences imposed under criminal cause No. 11032. That the petitioner in citing the case of Eyler v. Aderhold—CC.A. 5th. Cir. No. 7182: Alleges that this case although affirmed and not in direct conflict with the petitioner's case, it has within opinions that controlls the petitioner's case in respect to the commencement of the sentence, it follows: (2-5) It has been the rule, in the absence of statute that if the commitment is silent as to the date the sentence shall begin to run, it will commence with the date of delivery to the designated jail. Prior to the adoption of the Act of June 29, 1932, it was quite usual in sentencing a convicted person to impose the statutory penalty and give credit for such time as he had been confined in jail awaiting trial. This sometimes led to an arbitrary construction of the commitment by the jailer, which tended to deprive the prisoner of the

credit intended to be given by the court. It also frequently happened that after sentence the prisoner would be detained in a local jail awaiting transportation to the penal institution in which he was to be confined for service of the sentence. Credit on the term could not be given for this imprisonment unless the commitment so provided. It is to be assumed that Congress intended to prevent situations such as these that might be detrimental to the rights of the prisoner as well as to make certain the date when a sentence legally began, something very necessary for the reasonable and proper application of the parole laws. Of course, a judge may take into consideration the time a person has remained in jail awaiting trial in imposing the sentence and if, through an unavoidable delay or the carelessness of the marshal, his delivery to a penitentiary or other penal instruction is postponed, his rights will not suffer."

5. The petitioner avers and alleges that in criminal cause No. 11032, three sentences were imposed totaling ten years and a fine of ten thousand dollars. That a certified copy of the indictment, judgment commitment and warrant to [5] convey in Cause No. 11032, is attached hereto made a part hereof and marked as "Exhibits A".

6. The petitioner avers and alleges that in criminal cause No. 11,074, he entered a plea of guilty and was sentenced to a term of five years on the date of September 17, 1930. That the judgment is as follows:

"Be imprisonment in the United States Penitentiary at Leavenworth, Kansas, for the period of five years, said sentence to run and be served consecutively with the sentence imposed against the said defendant in case No. 11,032, and that said defendant be committed to said Penitentiary pursuant to said sentence." The petitioner alleges that the sentence of five years in case No. 11074, and the sentences totaling ten years in case No. 11,032, are aggregated totaling fifteen years. The petitioner alleges that the total sentence of fifteen years expired on October 12, 1940. That the said fine of ten thousand dollars has been fully paid, having served sufficient time over the discharge date as required by law under the pauper's oath, and that a pauper's oath is attached hereto made a part hereof and marked as, "Exhibit B". That a certified copy of the indictment, judgment, commitment, and warrant to convey is attached hereto made a part hereof and marked as "Exhibits C".

7. The petitioner avers and alleges that the only sentence known to the law is the sentence or judgment entered upon the records of the Court.

Miller v. Aderhold, supra; Manke v. People, supra. If the entry is inaccurate, there is a remedy by motion to correct it to the end that it may speak the truth. People ex rel. Trainor V. Baker, 89 N. Y. 460, 466. But the judgment imparts verity when collaterally assailed. Ibid. Until corrected in a direct proceeding, it says what it was meant to say, and this by an irrebuttable presumption. In

any collateral inquiry, a court will close its ears to a suggestion that the sentence entered in the minutes is something other than the authentic expression of of the sentence of the judge. The petitioner alleges that the records and minutes in criminal cause No. 11,032, will clearly show the specification entered into the judgment was entered after the departing of the said petitioner from the court. That such an entry by the clerk of the court should be considered as no weight of authority and should be held void insofar as the specification is concerned. That under (18 U.SCA.x—569, 641) Provisions [6] in commitment for imprisonment for non payment of fine and costs which was inserted by clerk but not included in sentence pronounced by judge held void; as in the case of Hill, Warden v. United States ex rel. Wampler, No. 847; as ruled in an opinion by Mr. Justice Cardoza, on questions No. 1, Fines 6, 12 (U.S.C.A.—569, 641) and No. 9, Criminal Law—999 (1) (18 U.S.C.A.—569, 641). That under this aforesaid cited case a clerk of the court is without authority to add a specification to the judgment, regardless whether the provisions mentioned are for payment of fine or for other penal instructions.

8. The petitioner avers and alleges that his term of imprisonment has expired in full and he is subject to discharge by Habeas Corpus in case No. 11032 and 11,074. That a petition styled in the form of a subpoena for letters and records in support of the allegations set forth in this said complaint, is—

attached hereto made a part hereof and marked as, "Exhibits F".

9. The petitioner avers and alleges that in citing Collins v. State (2 Div. 352) The foregoing opinion is cited with approval in State v. Brennan, 83 N.J. Law, 12, 84 A. 1066. Su, also, Crain v. U.S., 162 U.S. 625, 16 S.Ct. 952, 40 L. Ed. 10 97. The clerk has no power to enter, and it is error for the court to permit a judgment to stand declaring that a defendant has been convicted of one offense, when in fact the conviction was for another and separate offense. This is more than a technical error. A judgment is a solemn record, which should speak the truth, and is ordinarily conclusive evidence of the fact recited in it, and such evidence ought not to be permitted to stand when, on direct appeal, it appears that the recitals are not true. People v. Eppinger, 114 Cal. 350, 46 P. 97. The trial court was in error in refusing to set aside the judgment.

If there had been a plea of guilty as to the second count, the judgment would not be reversed on account of a failure of proof. The judgment is reversed, and the cause is remanded. That the aforesaid opinion is in direct conflict with the petitioner's case No. 11032, in reference to the specification entered by the clerk of the court after final judgment was passed and sentences had begun to run.

10. The petitioner avers and alleges that he presents a certified copy of an indictment, commitment, judgment and warrant to convey No. 11,073, issued out of the said trial court on the seventeenth

day of September 1930 A.D. That the parties, Carl Sanders, Robert Raymond and Joe Hartman named in the aforesaid indictment, commitment and warrant to convey to be codefendants of the said [7] petitioner's. That the aforesaid parties received judgment and sentences in case No. 11,073 and case No. 11032, at the same identical time the said petitioner received judgment and sentence in case No. 11074 and case No. 11032. That said petitioner alleges that he, Carl Sanders, Robert Raymond and Joe Hartman, parties aforesaid, stood before the bar of justice in the aforesaid trial court, at the same date, hour and minute, received judgment and sentences and were taken from the court by the Marshal and returned to the State Penitentiary. The petitioner alleges that the aforesaid indictment, commitment, judgment and warrant to convey No. 11073, issued out of the said trial court on the seventeenth day of September 1930 A.D., is attached hereto made a part hereof and marked as "Exhibits D".

11. The petitioner avers and alleges that he presents a certified copy of an indictment, judgment and commitment, marked as "Exhibits E", case No. 11032, attached as to "Exhibits D", as was certified out of the aforesaid trial court under a single warrant to convey the aforesaid parties named therein, excluding the petitioner from the issue in "Exhibits D". That the aforesaid parties named in the warrant to convey attached to "Exhibits D", are codefendants of the petitioner, and the peti-

tioner alleges that the sentence imposed in case No. 11074 contains no specifications of the type that appears in case No. 11032, marked as "Exhibits A" and "Exhibits E". The petitioner alleges that if the specification appearing as a separate paragraph offset from the final judgment in "Exhibits A" and "Exhibits E", had of been ordered by the sentencing judge on passing of judgment and sentence, the aforesaid specification would appear in the judgment; as in the final judgment in case No. 11,074 against Marion Bowles, codefendant of the petitioner's. The petitioner alleges that the sentences imposed under "Exhibits A, C, D, and E", were imposed at the same time and the minutes of the court will not prove otherwise.

12. The petitioner avers and alleges that an examination of the contents of "Exhibits A" will disclose that a specification is entered under the judgment and is not a part of the contents of the original judgment; therefore the petitioner claims that this specification is an addition made on the part of the clerk of the aforesaid trial court. The petitioner alleges on page one of "Exhibits A" the judgment contains but one date and that is September 17, 1930. That the last words spoken by the trial judge was as is quoted, as follows: [8] "that they each pay a fine to the United States in the sum of Ten Thousand Dollars, that execution issue therefore and that the said defendants stand committed to the said Penitentiary until said fines shall have been fully paid". The petitioner alleges

that on page two of "Exhibits A" the contents will disclose that a specification entered was inserted by William Ryan, United States Marshal from the aforesaid District and trial court. That a close examination will disclose that the clerk of the aforesaid trial court has fixed the date of the 17th day of September, A.D. 1930. And that the clerk D. H. Reed, has stated that the foregoing to be a true copy of an order made and entered in said court on the 17th. day of September, A. D. 1930, as fully as the same appears upon the records now in said clerk's office. That the clerk of the aforesaid trial court has stated that the foregoing "Exhibits A" to be entered into the records as on the date of September 17, A. D. 1930.

13. The petitioner avers and alleges that a close examination of "Exhibits C", will disclose that the specification therein entered into the judgment against Marion Bowles, said specification aforesaid is expressed in the judgment and does not appear as entery made after final judgment. The petitioner further alleges that it fully appears that the court in—pronouncing judgments and sentences in Case No. 11032 and Case No. 11,074, should have been familiar with the procedure practiced by Federal Courts on convictions gained by a Federal Court against the petitioner, at which time the petitioner was undergoing a term in a State Prison. The conviction in the Federal Court in case No. 11,032 and 11074, could have been legally gained and judgment and sentence deferred or suspended,

until the petitioner had of been released from the State Prison, and then the court could have recalled the petitioner for judgments and sentences, which would be legal and the only possible method to apply to a case such as the cases of the petitioner. But the court did not apply this method and for the reason that the petitioner failed to take the witness stand, and therefore the court was not aware of the fact that the petitioner was undergoing a term in a State Penitentiary. The petitioner alleges the court became familiar with the facts of the petitioner's prior sentence in the State Penitentiary, after the petitioner was returned to the State Authorities. That the court did not attempt to correct the situation by legal procedure, such as recalling the petitioner and deferring sentence or suspending the term of imprisonment before or after the term of court in which [9] the petitioner was convicted. Therefore the petitioner alleges a specification was entered by the clerk in an attempt to post date the commencement of the sentence. That such a specification was entered without any date as to when the sentence begun, and therefore the petitioner alleges the sentence begun to run as on the date of September 17, 1930.

14. The petitioner avers and alleges that under case No. 11,032 he received sentences as follows: Five years on Count One, Three years on Count Two, Two years on Count Three: That the sentences were to be served consecutively and were aggregated together making a total of ten years. That in

case No. 11032, the petitioner was fined ten thousand dollars, said fine to stand committed. The petitioner further alleges that in case No. 11,074, the petitioner was sentenced to a term of five years and to run consecutively with case No. 11032. That the sentence of five years in case No. 11,074, was aggregated together with the sentences imposed in Case No. 11,032. This said aggregation of sentences in both cases, No. 11,032 and 11,074, making a total sentence of fifteen years and a fine of ten thousand dollars. That the petitioner was due out on a discharge on the fifteen year sentence October 12, 1940. That the petitioner would have been subject to serving an extra thirty days for payment of fine under the pauper's oath. This would of made the petitioner serve ten years, one month and twenty five days to complete and satisfy the final judgments in case No. 11,032 and 11,074.

15. The petitioner prays the Honorable Court to let the Subpoena for letters and Records in support of the foregoing allegations issue out of the Honorable Court, directed at such persons therein named, to furnish your honorable court with such evidence that is in connection with the petitioner's case No. 11,032 and 11,074.

16. The petitioner avers and alleges that since his incarceration in the United States Penitentiary at Alcatraz Island, California, located in the Southern Division, Northern District of California, San Francisco, he has never waived any of his rights in any manner whatsoever.

17. The petitioner avers and alleges that he is illegally and unlawfully restrained of his liberty, prays that a writ of Habeas Corpus issue, directed to the Warden of the United States Penitentiary at Alcatraz, California, to bring and have your petitioner before your Honor, instanter, together with the true [10] cause of his detention, to the end that due inquiry may be had in the Chambers, and that your Honor may proceed in a summary way to determine the facts in this case and the legality of the imprisonment of the said petitioner, restraint, and detention, and further, that an order issue from under the seal of your Honor, discharging your petitioner from illegal and unlawful restraint and detention, and your petitioner will ever pray.

CECIL WRIGHT.
Petitioner [11]

AFFIDAVIT

State of California
County of San Francisco—ss.

Personally appeared before me, Cecil Wright, who being duly sworn, deposes and says that he has read the foregoing attached petition, that he knows the contents thereof, and that the allegations therein contained are true except as to such matters as are stated upon information and belief and that these he verily believes to be true and that he is entitled to the relief therein sought.

CECIL WRIGHT
Affiant and Petitioner.

Subscribed and sworn before me, a Notary Public, in and for the aforesaid County and State, this 22 day of September in the year of our Lord, 1941 A. D.

E. S. MILLER
Notary Public
Associate Warden U. S. P.,
Alcatraz Island, Calif.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths.

Filed in the District Court.....A. D. 1941. [12]

"EXHIBITS F"

[Title of Cause.]

PETITION FOR SUBPOENA OF LETTERS AND RECORDS IN SUPPORT OF ALLEGATIONS SET FORTH IN THE COMPLAINT HERETOFORE ATTACHED AND STYLED IN THE FORM OF HABEAS CORPUS.

1. The petitioner hereof subpoenas the records and minutes of the court in case No. 11032 and 11074. That the records and minutes of the court will support the allegations in reference to the specification entered into the judgment.

2. The petitioner hereof subpoenas the duplicate copies of letters addressed to the petitioner from the trial court, written and signed by Judge Walter

C. Lindley. That the trial judge wrote a letter to the petitioner in 1935 and informed the petitioner that the sentence imposed in case No. 11,032 and 11,074 had begun and that he had lost jurisdiction of the said case after the expiration of the term of court in which the said petitioner was convicted and especially after the petitioner's sentence had begun. This letter was written in 1935 at which time the petitioner was incarcerated in the Southern Illinois Penitentiary and signed by the trial judge. Therefore the petitioner claims the right to have copies of such letters in court to prove that the specification entered into the judgment was entered by the clerk of the court after the sentence had begun to run.

3. The petitioner hereof subpoenas the central files in possession of James A. Johnston, Warden of the United States Penitentiary, Alcatraz Island, California, named as respondent in the Petition for a Writ of Habeas Corpus, heretofore attached to this said subpoena. That said respondent to have in his possession a certified copy of the judgment and commitment appearing as from the originals issued under the hand and seal of the trial court, and to further show from the records by what laws the respondent was empowered to start a sentence nine years one month and thirteen days after judgment and sentence was imposed by the trial court and entered into the records and minutes of [13] the Court.

4. The petitioner hereof subpoenas the records from the office of James A. Finch, United States

Attorney, Washington, D. C. That such records appearing in the form of letters on file in correspondence between the petitioner and the late United States Senator, James Hamilton Lewis. That such letters will furnish proof and support allegations set forth in the complaint heretofore attached to this said subpoena. That a letter written to the petitioner by Judge Walter C. Lindley in 1935, at which time said petitioner was incarcerated in the State Penitentiary and said letter states the petitioner's sentence had begun and that the only remedy on the part of the petitioner was by applying for executive clemency. That such a letter is on file in the office of the aforesaid Pardon Attorney, and the said petitioner claims he is entitled to have the letter as the original to be produced into Court to verify the petitioner's allegations.

5. The petitioner avers and alleges that he is entitled to the above mentioned letters and records and that such records and letters be produced by subpoena; said subpoena to be issued out of the United States District Court, Northern District, Southern Division, San Francisco, California, to the above named persons listed in the said Petition for subpoena of Letters and Records, in support of Allegations set forth in the Complaint heretofore attached and styled in the form of Habeas Corpus.

(Signed) CECIL WRIGHT
Petitioner, Affiant

AFFIDAVIT

County of San Francisco
State of California—ss.

Personally appeared before me Cecil Wright, deposes and says he has read the foregoing subpoena and knows the contents thereof, and that he is entitled to the records and letters therein sought to support the allegations set forth in the Petition heretofore attached and styled as Habeas Corpus.

(Signed) CECIL WRIGHT,
Affiant-Petitioner

Subscribed and sworn to before me a Notary Public this 22 day of September, A. D. 1941.

E. S. MILLER
Notary Public
Associate Warden U. S. P.,
Alcatraz Island, Calif.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths. [14]

EXHIBITS "A"

In the District Court of the United States
for the Eastern District of Illinois
Wednesday, September 17, 1930

Present: Honorable Walter C. Lindley, Judge.

No. 11032

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JOSEPH HARTMAN and TUCK WRIGHT

INDICTMENT VIOLATION OF POSTAL LAWS

1st—Breaking into Post Office 18 USCA 315
2nd—Stealing Govt. Property (18 USCA) 313
3rd—Conspiracy.

And now on this 17th day of September, A. D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendant, Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright, each in person, and by J. D. Allen, their attorney. And now comes the defendant, Tuck Wright, by his said attorney, and enters motion for a continuance, which said motion is by the court denied, and now comes the said defendant and enters motion for separate trial,

which said motion is by the court denied, and issue being joined, the following named jurors are tendered and accepted to wit: Stephen Gannon, H. R. Boeschen, G. W. Gilliland, Oscar Forth, D. C. Burrow, Sam Wilson, Harry Beard, Mark Wiseman, William Basinger, Charles Tilton, Dan Fritz and J. W. Snider, who are duly sworn to well and truly try the issues joined in this case and a true verdict render according to law and evidence. And after hearing the evidence in the case, the argument of counsel, and the instructions of the Court, the jury retire to consider their verdict, and afterward come into Court and for verdict say: "We, the jury find the defendants, Carl Sanders, Tuck Wright, Joe Hartman and [15] Robert Raymond guilty in manner and form as charged in the indictment." And the said defendants being arraigned at the bar of the Court for sentence and they having nothing further to say why sentence should not be pronounced against them, it is, therefore considered and adjudged by the Court that the said defendants Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright, for the offense by them committed in manner and form as charged in the said indictment and as found by the jury in this case each be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the period of five years on the 1st count of the indictment, three years on the 2nd count and two years on the 3rd count, from the date of delivery of the said defendants to the Keeper or Warden of the said Peni-

tentiary, said sentences to run and be served consecutively; that they each pay a fine to the United States in the sum of Ten Thousand Dollars, that execution issue therefor and that the said defendants stand committed to the said Penitentiary until said fines shall have been fully paid.

(It is further ordered by the court that the sentences herein imposed shall begin upon the expiration of the sentences which the said defendants are now serving in the Southern Illinois Penitentiary.)

(Entry made by Clerk of District Court.) [16]

United States of America
Eastern District of Illinois—ss.

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, do hereby certify the foregoing to be a true copy of an order made and entered in said Court on the 17th day of September, A. D. 1930, as fully as the same appears upon the records now in my office.

In Testimony Whereof, I have hereunto set may hand and affixed the Seal of said Court, at Danville in the District aforesaid, this 17th day of September, A. D. 1930.

(Signed) D. H. REED
[Seal] Clerk.

The true and original date of judgment and sentence.

(I hereby certify that I have executed the within writ as to Tuck Wright by transporting and deliver-

ing him to the U. S. Penitentiary at Leavenworth, Kas., the 1st day of November, A. D. 1939.)

(Entered 9 years, 1 month, 15 days after sentence and final judgment.)

(Signed) WILLIAM RYAN
U. S. Marshal.

22413
No. 11032

United States District Court, Eastern District of Illinois

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JOSEPH HARTMAN and TUCK WRIGHT. [17]

CERTIFIED COPY OF SENTENCE

Filed Nov. 7, 1939.

(This date is not in conflict with any other date mentioned and is of no bearings on the day sentence begun to run.)

D. H. REED
Clerk

10 years U. S. Pen at Leavenworth, Kansas; and to pay a fine of $10,000.00; stand committed.

District Court of the United States of America
Eastern District of Illinois

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois,

and keeper of the records and seals thereof, do hereby certify the foregoing to be a true copy of the Judgment and Commitment in the matter of the United States vs. Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright, Criminal Case No. 11032, as fully as the same appears from the original now on file and of record in my office as Clerk of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of East St. Louis, in the District aforesaid, this 19th day of June A. D. 1941.

(The above date is the date when papers were received by the petitioner.)

[Seal]

"Certified." [18]

(Here follows "Exhibits A", which is a copy of the Indictment in No. 11032, United States vs. Robert Raymond, et al, and was copied as Exhibit "O" in Case No. 23744.)

(Following "Exhibit A" is the following certificate)

District Court of the United States of America
Eastern District of Illinois

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, and keeper of the records and seals thereof, do hereby certify the foregoing to be a true copy of Indictment in the case of the United States vs.

Robert Raymond, et al., Criminal Case No. 11032, as fully as the same appears from the original now on file and of record in my office as Clerk of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my Office in the City of East St. Louis, in the District aforesaid, this 19th day of June, A. D. 1941.

Clerk

(The above date is when petitioner received the paper from the court.)

[Seal]

Seal defaced by Issac Sway, Sr., Warden's Assistance, United States Penitentiary, Leavenworth, Kansas. [19]

"EXHIBIT*S* C."

In the District Court of the United States
for the Eastern District of Illinois

Wednesday, September 17, 1930

Present: Honorable Walter C. Lindley, Judge.

No. 11074

THE UNITED STATES

vs.

MONTE CRIST, CECIL WRIGHT, alias TUCK WRIGHT and MARION BOWLES

INDICTMENT

VIOLATION NATIONAL MOTOR VEHICLE THEFT ACT.

1 count, Transportation 18 USCA 408

And Now on this 17th day of September, A. D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendants Cecil Wright alias Tuck Wright and Marion Bowles, each in person, and by J. D. Allen, their attorney. And now comes the defendant, Cecil Wright alias Tuck Wright, and by leave of court withdraws his plea of not guilty heretofore entered herein, and instead thereof says that he is guilty in manner and form as charged in the in-

dictment. And now issues being joined as to the defendant, Marion Bowles, and jury being waived, his case comes on for hearing before the Court, and after hearing the evidence in the case and the arguments of counsel and being fully advised in the premises, the court finds the defendant, Marion Bowles guilty in manner and form as charged in the indictment. And now the said defendants, Cecil Wright alias Tuck Wright and Marion Bowles being before the court for sentence and they having nothing to say why sentence should not be pronounced against them—It is, therefore, considered and adjudged by the Court, that the said defendant Cecil Wright alias Tuck Wright, for the offense by him committed in manner and form as charged in the indictment, and as by him confessed, be imprisoned in the United States Peniten- [20] tiary at Leavenworth, Kansas, for the period of five years, said sentence to run and be served consecutively with the sentence imposed against the said defendant in case No. 11032, and that said defendant be committed to said Penitentiary pursuant to said sentence. And it is considered and adjudged by the Court that the defendant, Marion Bowles, for the offense by him committed, in manner and form as charged in the indictment and as found by the court, be imprisoned in the United States Penitentiary at Leavenworth Kansas, for the period of five years from the date of the delivery of the said defendant to the Keeper or Warden of the said Penitentiary, said sentence to begin upon the ex-

piration of the sentence which the said defendant is now serving in the Southern Illinois Penitentiary, and that the said defendant be committed to the United States Penitentiary pursuant to said sentence.

A close examination of the contents will disclose that this judgment contains a specification entered into the judgment against Marion Bowles codefendant of the petitioner in Cause No. 11,074, but is not a specification against the petitioner. That the specification in this above judgment does not appear as the type of construction of a specification entered into the judgment in Case No. 11,032 against the petitioner. [21]

United States of America
Eastern District of Illinois—ss.

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, do hereby certify the foregoing to be a true copy of an order made and entered in said Court on the 17th day of September, A. D. 1930, as fully as the same appears upon the records now in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Danville in the District aforesaid, this 17th day of September, A. D. 1930.

(Signed) D. H. REED
[Seal] Clerk

The true and original date of judgment and sentence.

(I hereby certify that I have executed the within writ by transporting and delivering the within named Tuck Wright to the U. S. Penitentiary at Leavenworth, Kas., the 1st day of November A. D. 1939.)

(Entered 9 years, one month, 15 days after sentence and final judgment.)

(Signed) WILLIAM RYAN
U. S. Marshal

#17848
No. 11074

United States District Court, Eastern District of Illinois

THE UNITED STATES

vs.

MONTE CRIST, CECIL WRIGHT, alias TUCK WRIGHT and MARION BOWLES [22]

CERTIFIED COPY OF SENTENCE

Filed Nov. 7, 1939.

(This date is not in conflict with any other date mentioned and is of no bearings on the day sentence begun to run.)

D. H. REED
Clerk

5 years U. S. Pen at Leavenworth, Kansas to run and be served consecutively with sentence in Criminal Case No. 11032.

District Court of the United States of America
Eastern District of Illinois

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, and keeper of the records and seals thereof, do hereby certify the foregoing to be a true copy of the judgment and commitment in the cause of The United States vs. Monte Crist, Cecil Wright, Alias Tuck Wright and Marion Bowles, Criminal Case No. 11074, as fully as the same appears from the original now on file and of record in my office as Clerk of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of East St. Louis, in the District aforesaid, this 19th day of June A. D. 1941.

Clerk

(The above date is when petitioner received papers from the Court.)

[Seal]

"Certified" [23]

———

EXHIBITS "C"—(Continued)

In the District Court of the United States of America for the Eastern District of Illinois

May Term, A. D. 1930

Eastern District of Illinois: ss.—The Grand Jurors for the United States of America empaneled

and sworn in the District Court of the United States of America, for the Eastern District of Illinois, at the May Term of said Court in the year A. D. 1930, and inquiring for said district upon their oaths present: that

Monte Crist,
Cecil Wright, and
Marion Bowles,

hereinafter called the defendants, on or about the 19th day of April, A. D. 1930, did unlawfully, knowingly and feloniously transport and cause to be transported in interstate commerce, one certain Ford Sedan motor vehicle, then and there bearing motor number A-2087965, from at or near Lovington, in the County of Moultrie, in the State of Illinois, in the Eastern District of Illinois, and within the jurisdiction of said court, to East Chicago, in the State of Indiana, which said motor vehicle had theretofore been stolen at Lovington, in the State of Illinois, the said defendants then and there well knowing the same to have been stolen:

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) HAROLD G. BAKER
United States Attorney [24]

(Copy)

No. 11074

United States Dist. Court
East. District of Ill.

..... Division

THE UNITED STATES OF AMERICA

vs.

MONTE CRIST, et. al.

INDICTMENT

Violation Natl. Motor Vehicle
Theft Act

A true bill,
(Signed) A. H. FAVREAU
Foreman

Filed in open Court this ..... day of .....
A. D. 19....

.....
Clerk

Bail, $5,000.00
(Signed) HAROLD G. BAKER
U. S. Attorney [25]

District Court of the United States of America
Eastern District of Illinois

I, G. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois,

and keeper of the records and seals thereof, do hereby certify the foregoing to be a true copy of the Indictment in the case of The United States vs. Monte Crist, et al., Criminal Case No. 11074, as fully as the same appears from the original now on file and of record in my office as Clerk of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of East St. Louis, in the District aforesaid, this 19th day of June A. D. 1941.

[Seal] .....

Certified Clerk

(The above date is when petitioner received the papers from the Court.) [26]

"EXHIBITS E"

From page 1 to 5

"EXHIBITS D"

From page 6 to 10

In the District Court of the United States
For the Eastern District of Illinois

Wednesday, September 17, 1930

Present: Honorable Walter C. Lindley, Judge

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JOSEPH HARTMAN and TUCK WRIGHT

No. 11032

INDICTMENT VIOLATION OF POSTAL LAWS

1st—Breaking into Post Office
2nd—Stealing Government Property
3rd—Conspiracy.

And now on this 17th day of September, A. D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendants, Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright, each in person, and by J. D. Allen, their attorney. And now comes

the defendant Tuck Wright, by his said attorney, and enters motion for a continuance, which said motion is by the court denied, and now comes the said defendant and enters motion for a separate trial, which said motion is by the court denied, and issue being joined, the following named jurors are tendered and accepted to wit: Stephen Gannon, H. R. Boeschen, G. W. Gilliland, Oscar Forth, D. C. Burrow, Sam Wilson, Harry Beard, Mark Wiseman, William Basinger, Charles Tilton, Dan Fritz and J. W. Snider, who are duly sworn to well and truly try the issues joined in this case and a true verdict render according to law and evidence. And after hearing the evidence in the case, the arguments of counsel, and the instructions of the Court, the jury retire to consider their verdict, and afterward come into Court and for verdict say: [27]

"We, the jury find the defendants, Carl Sanders, Tuck Wright, Joe Hartman and Robert Raymond guilty in manner and form as charged in the indictment." And the said defendants being arraigned at the bar of the Court for sentence and they having nothing further to say why sentence should not be pronounced against them, it is therefore, considered and adjudged by the Court that the said defendants Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright, for the offiense by them committed in manner and form as charged in the said indictment and as found by the jury in this case each be imprisoned in the United States Penitentay at Leavenworth, Kansas, for the period of five years on the 1st count of the indictment, three

years on the 2nd count and two years on the 3rd count, from the date of delivery of the said defendants to the Keeper or Warden of the said Penitentiary, said sentences to run and be served consecutively; that they each pay a fine to the United States in the sum of Ten Thousand Dollars, that execution issue therefor and that the said defendants stand committed to the said Penitentiary until said fines shall have been fully paid.

(It is further ordered by the court that the sentences herein imposed shall begin upon the expiration of the sentences which the said defendants are now serving in the Southern Illinois Penitentiary.)

(Entry by Clerk of Court.)

"Exhibits E" and "Exhibits D" attached together Case No. 11,032 and Case No. 11,073 was received in this manner under one warrant to convey appearing on Page 7, of Exhibits D." [28]

In the District Court of the United States of America for the Eastern District of Illinois

May Term, A. D. 1930

Eastern District of Illinois; ss.—The Grand Jurors for the United States of America empaneled and sworn in the District Court of the United States of America, for the Eastern District of Illinois, at the May Term of said court in the year 1930 and inquiring for said district upon their oaths present: that

Robert Raymond
Carl Sanders
Joseph Hartman
Monte Crist and
Tuck Wright, whose true Christian name is to the Grand Jurors, unknown,

hereinafter called the defendants on, to-wit, the 9th day of April, A. D. 1930 at Strasburg, in the County of Shelby, in the State of Illinois, in the Eastern District of Illinois and within the jurisdiction of said court, did then and there unlawfully, forcibly and feloniously break into a certain building used as a Postoffice of the United States at Strasburg, Illinois with the intent then and there in them, the said defendant, to commit larceny in said building so used as a Postoffice of the United States.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) HAROLD G. BAKER
United States Attorney [29]

SECOND COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: that

Robert Raymond
Carl Sanders
Joseph Hartman
Monte Crist and
Tuck Wright, whose true Christian name is to the Grand Jurors unknown,

hereinafter called the defendants on, to-wit, the 9th day of April, A. D. 1930 at Strasburg, in the County of Shelby, in the State of Illinois, in the Eastern District of Illinois and within the jurisdiction of said court did, then and there unlawfully and feloniously steal, take and carry away from a certain building occupied by the Postoffice Department of the United States at Strasburg, Illinois certain personal property belonging to the United States, to-wit, $2.43, a more particular description of which said personal property is to the Grand Jurors unknown, with the intent then and there in them, the said defendants, to convert said personal property to their own use.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) HAROLD G. BAKER
United States Attorney. [30]

THIRD COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: that

Robert Raymond
Carl Sanders
Joseph Hartman
Monte Crist and
Tuck Wright, whose true Christian name is to the Grand Jurors unknown,

hereinafter called the defendants did, on or about the 1st day of April, A. D. 1930 and thence continuously throughout the period of time from that

date to the date of the return and filing of this indictment, in the State of Illinois, and within the Eastern District of Illinois aforesaid, did unlawfully, wilfully, knowingly and feloniously conspire, combine, confederate and agree together, each with the other, to, during said period of time, in said state and district to violate Sections 313 and 315 of the United States Code, that is to say that they so conspired, confederated and combined and agreed together, each with the other, to unlawfully break into and enter a certain Postoffice of the United States at Strasburg, Illinois and to steal, take and carry away from said Postoffice certain personal property then and there belonging to the United States. And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that in the furtherance of and in the pursuance of and in the execution of and for the purpose of carrying out and to effect the object, design and purpose of said conspiracy, combination, confederation and agreement the following overt acts were committed within the jurisdiction of said court: [31]

1. That on or about April 9, A. D. 1930 the said Robert Raymond, Carl Sanders, Joseph Hartman, Monte Crist and Tuck Wright, did assault one William M. Wilson at Strasburg, Illinois.

2. That on or about April 9, A. D. 1930, the said Robert Raymond, Carl Sanders, Joseph Hartman, Monte Crist and Tuck Wright, did break and enter the Postoffice of the United States at Strasburg, Illinois.

3. That on or about April 9, A. D. 1930 the said Robert Raymond, Carl Sanders, Joseph Hartman, Monte Crist and Tuck Wright, did steal, take and carry away $2.43 from the Postoffice of the United States at Strasburg, Illinois.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) HAROLD G. BAKER
United States Arrorney.

Endorsed:

No. 11,032 United States District Court, Eastern District of Illinois The United States vs. Robert Raymond, et al Indictment for Violation of the Postal Laws. A True Bill (Signed) A. H. Favreau. Filed Jun. 5 1930. Douglas H. Reed, U. S. Court Clerk. (Signed) Harold G. Baker, U. S. Attorney. $10,000. [32]

"EXHIBITS D"

In the District Court of the United States
For the Eastern District of Illinois

Wednesday, September 17th, A. D. 1930

Present: Honorable Walter C. Lindley, Judge.

No. 11073

THE UNITED STATES

vs.

CARL SANDERS, ROBERT RAYMOND and JOE HARTMAN

VIOLATION NATIONAL MOTOR VEHICLE THEFT ACT

1st—Transporting Stolen Car.

And Now on this 17th day of September, A. D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendants Carl Sanders, Robert Raymond and Joe Hartman, each in person, and by J. D. Allen, their attorney. And now come the said defendants by their said attorneys and by leave of court first had and obtained, withdraw their pleas of not guilty heretofore entered herein, and instead say that they are guilty in manner and form as charged in the indictment, and they having nothing to say why sentence should not be pronounced against

them—It is therefore, considered and adjudged by the Court, that the said defendants Carl Sanders, Robert Raymond and Joe Hartman, for the offense by them committed, in manner and form as charged in the said indictment and as by them confessed, each be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the period of five years, said sentence to run and be served consecutively with the sentence imposed against said defendants in cause No. 11032 in this court, and that the said defendants be committed to the said Penitentiary pursuant to said sentence.

The above sentence was imposed in the case of 11,073, at the same time sentence was imposed in case No. 11032. If the specification had of been ordered by the trial court [33] then both judgment 11,073 and 11,032 would contain the specification that appears in case No. 11032. This proves that the specification was entered into case No. 11032 by the Clerk, after judgment was passed by the Court. [34]

In the District Court of the United States of America for the Eastern District of Illinois

May Term, A. D. 1930

Eastern District of Illinois; ss.—The Grand Jurors for the United States of America empaneled and sworn in the District Court of the United States of America, for the Eastern District of Illinois, at the May Term of said court in the year

1930 and inquiring for said district upon their oaths present: that

Monte Crist,
Carl Sanders,
Robert Raymond,
Joseph C. Hartman alias
Joe Hartman, and divers other persons whose names are to the Grand Jurors unknown,

hereinafter called the defendant, on or about April 12, A. D. 1930, did unlawfully, knowingly and feloniously transport and cause to be transported in interstate commerce, one certain Ford Roadster motor vehicle, then and there bearing motor number A-1-551-343, from at or near Westfield, in the County of Clark, in the State of Illinois, in the Eastern District of Illinois and within the jurisdiction of this court, to Veedersburg, in the State of Indiana, which said motor vehicle had theretofore been stolen in the State of Illinois, aforesaid, the said defendants then and there well knowing the same to have been stolen.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) HAROLD G. BAKER
United States Attorney. [35]

Endorsed:

No. 11,073 United States District Court, Eastern District of Illinois, ... Division. The

United States of America, vs. Monte Crist, et al. Indictment National Motor Vehicle Theft Act. A true bill, (Signed) A. H. Favreau, Foreman. Filed June 5 1930. D. H. Reed, Clerk. Bail, $5000.00. (Signed) Harold G. Baker, U. S. Attorney. [36]

District Court of the United States of America
Eastern District of Illinois

The President of the United States to the Marshal of the Eastern District of Illinois—Greeting:

Whereas, at the September Term of the District Court of the United States for said Eastern District of Illinois, begun and held on the 1st day of September, A. D. 1930, at the City of Danville, in said District, to wit:

On the 17th day of September, A. D. 1930 Carl Sanders, Robert Raymond, Joe Hartman indicted for Violation National Motor Vehicle Theft Act having plead guilty were each sentenced to be imprisoned in the United States Penitentiary, at Leavenworth, Kansas, for the period of five years Said sentence to run and be served consecutively with the sentences imposed against said defendants in cause 11032

You Are Therefore Commanded to take the said Carl Sanders, Robert Raymond and Joe Hartman and them convey as soon as possible to the said United States Penitentiary, at Leavenworth, Kansas, there to be imprisoned in pursuance of the said sentence, and to deliver to the Warden of said Peni-

tentiary a duly certified copy of said sentence, under the seal of the said Court.

Hereof Fail Not, and of this writ and your doings thereon make due return.

Witness, the Honorable Walter C. Lindley, Judge of said Court, at Danville, in the said District aforesaid, this 17th day of September, A. D. 1930.

(Signed) D. H. REED
[Seal] Clerk [37]

A true copy of the original issued out of the Court but never carried out until June 26, 1934. The above mentioned parties are codefendants of the said petitioner's in Cause No. 11,032, and sentence was imposed on each of the parties, including the petitioner at the same time as in case No. 11,074 and No. 11032.

United States of America,
Eastern District of Illinois—ss.

I have executed the within writ by transporting and delivering the within-named defendant Carl O. Sanders & Joseph Hartman to the Warden of United States Penitentiary, at Leavenworth, Kansas, as I am herein commanded, this 26 day of June, A. D. 1934.

(Signed) ARTHUR M. BURKE
U. S. Marshal
By (Signed) HOWARD ROSS
Deputy

Marshals's Fees, $.....

(The above date is of when the codefendants of the petitioner's were delivered into the Leavenworth Penitentiary.)

17848 to 22413
No. 11073

District Court of the United States
Eastern District of Illinois

THE UNITED STATES

vs.

CARL SANDERS, ROBERT RAYMOND and JOE HARTMAN [38]

WARRANT TO CONVEY

Filed Nov. 15, 1934.
D. H. REED,
Clerk.

District Court of the United States of America
Eastern District of Illinois

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, and keeper of the records and seals thereof, do hereby certify the foregoing to be a true copy of Indictment in Criminal Case No. 11032, together with plea and sentence, Indictment in Criminal Case No. 11073, together with plea and sentence and Warrant to Convey, both cases of the United States vs. Carl

Sanders, et al, as fully as the same appear from the originals now on file and of record in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of East St. Louis, in the District aforesaid, this 28th day of October, A. D. 1935.

D. H. REED
Clerk.

(The above date is when petitioner's codefendants received indictment, commitments, judgments and warrants to convey.) [39]

[Seal]

(Seal destroyed by Issac Swan, United States Penitentiary, Leavenworth, Kansas, Sr. Wardens Assistance.)

[Endorsed]: Filed Oct. 14, 1941.
WALTER B. MALING,
Clerk. [40]

In the District Court of the United States of America Within and for the Northern District of California, Southern Division, San Francisco.

Civil Action H. C.
No. 23611 S

CECIL WRIGHT,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden, U. S. Penitentiary, Alcatraz, California,

Respondent.

Cecil Wright
In Propria Persona

PETITION FOR WRIT OF HABEAS CORPUS

To: The Honorable Judge Michael J. Roche.

Now comes Cecil Wright, hereinafter referred to as the petitioner, and presents this his petition for a Writ of Habeas Corpus.

Your petitioner hereby respectfully submits the following statute empowering Your Honor to hear and consider this petition.

R. S. (752 U.S.C., Title 28) 452

Your petitioner asserts a previous supplication was filed on October 14, 1941, the same being denied on October 18, 1941. The petitioner asserts he made several mistakes in his first application that

offset controling cases. The previous petition was based on one point, and the petitioner has set forth in this application two additional points that was not included in the previous application.

Statement of Facts

Your petitioner asserts he is a citizen under color of the United States and he is being restrained of his liberty by virtue of judgments and commitments that were void on October 12, 1940. That James A. Johnston, Warden United States Penitentiary, Alcatraz, California, herein referred [41] to as the respondent, is detaining and denying your petitioner his freedom on a sentence not authorized by statute, of his freedom on a sentence not authorized by statute.

II

Your petitioner asserts he was indicted in the United States District Court, Eastern District of Illinois, Dansville, hereinafter referred to as the trial court, at the May, 1930, A.D., term thereof setting under Criminal Cause No. 11032 and No. 11074, certified copies of indictments, judgments and commitments annexed hereto made a part hereof and marked petitioner's "exhibits A and B respectively."

III

The petitioner avers and alleges that he was first in custody of Federal Authorities having been indicted at the May 1930 term of Court. The petitioner was entitled to have his Federal charges

tried before being surrendered to State Authorities. The petitioner alleges he was confined to the Vermilion County Jail and held therein to await trial in Cause No. 11032 and No. 11074. The petitioner alleges he was confined in the Vermilion County jail from June 19, 1930 to July 23, 1930. A certified copy of the court record is annexed hereto made a part hereof and marked petitioner's "exhibit C". The petitioner alleges he was surrendered by the Federal Authorities to the Sheriff of Clark County on July 23, 1930.

IV

The petitioner avers and alleges he was placed on trial convicted and sentenced to the Southern Illinois State Penitentiary on July 25, 1930. The petitioner was sentenced to serve a term of not less than one year and no more than natural life. The petitioner alleges the state and Federal [42] do not exercise concurrent jurisdiction, unless the offense is punishable under both sovereignties. In the petitioner's case, the Federal offense was not punishable under State statute. And in the petitioner's state charge the offense was not punishable under Federal statute and a certified copy of the State proceedings is annexed hereto and made a part hereof and marked petitioner's "exhibit D."

V

The petitioner avers and alleges he was surrendered by Federal Authorities to the sheriff of Clark

County, Marshall, Illinois, immediately placed on trial, convicted and sentenced to serve a term of not less than one year and no more than natural life. The petitioner alleges he was conveyed to a Southern Illinois State Penitentiary, Menard, Illinois, on July 26, 1930.

VI

The petitioner avers and alleges he was taken from the Southern Illinois State Penitentiary on September 14, 1930, and placed under the custody of the United States Marshal at Danville, Illinois. The petitioner alleges he was convicted and sentenced in Criminal Cases No. 11032 and No. 11074 for terms totaling fifteen years. The petitioner alleges he was sentenced on September 17, 1930 to the United States Penitentiary, Leavenworth, Kansas. That the United States Marshal surrendered the petitioner back to the State Authorities on September 18, 1930, a certified copy of jail commitment is annexed hereto and made a part hereof and marked petitioner's "exhibit E."

VII

The petitioner avers and alleges he was paroled on October 9, 1939, by the Illinois State Parole Board. The Illinois State Parole Authorities notified the United States [43] *States* Marshal, and on October 31, 1939, the petitioner was conveyed from the Southern Illinois State Penitentiary to the United States Penitentiary, Leavenworth, Kansas,

on commitments dated on Stptember 17, 1930. The petitioner alleges that he was not discharged from the State Penitentiary and was only released on parole. That for verification of State Parole a certified copy of a letter from the State Board of Paroles is annexed hereto, made a part hereof and marked petitioner's "Exhibit F".

VIII

The petitioner avers and alleges that the trial judge wrote a letter to the petitioner and stated the sentence imposed on September 17, 1930, had started to run. That the court had lost jurisdiction over the petitioner's case after the expiration of the term of court in which the petitioner was convicted and especially after sentence had begun. Therefore the petitioner did not attempt to do anything in reference to his federal sentence while incarcerated in the States Penitentiary. The petitioner alleges if the trial judge's statement was true and the court had lost jurisdiction over the case after one term of court had expired, then its not within reason the sentence could be postdated to a date unknown to the court. The petitioner alleges that twenty seven terms of court had expired before the marshal executed the commitments. If the sentence of September 17, 1930, was the judgment of the court and was entered upon the records as a final judgment, the court was without power to keep the sentence from beginning to run.

IX

The petitioner avers and alleges the clerk of the court entered a specification under judgment No. 11032 after the [44] petitioner had been taken from the court room. The specification is no part of the sentence or judgment imposed by the trial judge. If the specification was a part of the original judgment, it would appear in the body of the judgment, and not as a footnote offset from the judgment of the court. If such an order was ordered by the court, the specification would also appear in the commitment. The petitioner was sentenced in the absence of statute and it has been a rule if the commitment is silent to the date the sentence is to begin, it will commence with the date of delivery to the designated jail. The petitioner alleges after sentence was imposed he was taken from the court and placed in the county jail. The petitioner alleges he was surrendered back to the State Authorities on September 18, 1930.

X

The petitioner avers and alleges the judgment No. 11074 does not provide a specification against the petitioner. The judgment No. 11074 provides the date of Wednesday, September 17, 1930, and the commitment No. 11074 provides the date of September 17, 1930. The sentence imposed in case No. 11074 was ordered to run consecutively with the sentence imposed on Case No. 11032. The sentences in Case No. 11032 and the sentence in case

No. 11074 were aggregated totaling fifteen years. Therefore the sentence in Case No. 11074 would start to run from the date of the judgment and commitment, as the sentence imposed in case No. 11074 could not be served separately from the sentence imposed in case No. 11032. On aggregation the sentences in both cases would start at the same time and would be served together. No provisions being made for the sentences in either case to start on October 31, 1939, the sentence in each case would start to run from the date shown by the [45] judgments and commitments.

XI

The petitioner avers and alleges that his sentence was imposed in the absence of statute and he was committed to the discretion of the court. The court imposed judgments and sentences on September 17, 1930, and the execution of sentence was not stayed by an appeal. The trial judge declared the sentence of September 17, 1930 a valid sentence and the beginning of sentence could not be delayed to an indefinite date unknown to the court. The trial judge further stated he had lost jurisdiction over the case after the expiration of the term of court in which the petitioner had been convicted. This seems to be contrary to the specification entered under judgment No. 11032. If the trial court had lost jurisdiction after one term of court had expired, then the trial court could not postdate the sentence to an indefinite date. The petitioner al-

leges at the time of judgment and sentence in his case, it was not necessary for the sentencing judge to sign the judgment of the court. The clerk of the court prepared the judgments and it seems there has been an ambiguous construction of the judgment No. 11032. The judgments No. 11032 and No. 11074 were not signed by the sentencing judge, and the clerk entered the specification after marshal's failure to comply with commitments.

XII

The petitioner avers and alleges his sentence began on September 17, 1930 and expired on October 12, 1940. That judgments No. 11032 and No. 11074 were void on October 12, 1940 and the petitioner is being held beyond the statutory period of time regulated by statute. The petitioner is now confined on void judgments and the sentence is in excess of [46] the maximum penalty that could be imposed under (313, 315, 88 and 408 of the Code of laws of the United States.

SUMMARY OF ARGUMENT

The petitioner makes three points in his argument. First, the petitioner was entitled to have his Federal sentence first executed, having been first indicted by Federal Authorities the jurisdiction of criminal case No. 11032, and No. 11074 falls within the ratio of Albori v. U. S. (C. C. A. Cal 1933) 67 F. (2d) 4. The Court first acquiring jurisdiction is entitled to prosecute and satisfy its

judgment to the end before surrendering the petitioner to another court. The petitioner asserts the Federal Court did not have power to give the judgment it did. The Federal Court did not have authority to sentence beyond its jurisdiction and to exceed the maximum penalty regulated by statute. The jurisdictional question arises after the Federal Court failed to prosecute case No. 11032 and No. 11074. The Federal Court having waived their rights to a foreign soverignty, was without jurisdiction to sentence beyond the statute. The Federal Court could not take the petitioner from a foreign soverignty and pass a valid judgment of conviction to start upon the expiration of an indefinite sentence imposed by the foreign soverignity. The sentence imposed by the State Court was an indeterminate sentence and did not have an expiration date. Therefore the Federal Court could not sentence to exceed the maximum penalty regulated by Statute. Second, the petitioner was entitled to time served from the date of commitment as provided for by the date of the sentence as shown by the judgments, this falls within the ration of in re Jennings, (C. C. MO. 1902) 118F-31 P. 479, 482. In re Jennings, Supra, the Court said: "Where a marshal failed to obey the judgment of a federal court directing him to convey a prisoner to the penitentiary, and deliver him to the keeper to serve a term of imprisonment, in execution of the sentence imposed by such [47] judgment, but, in violation of his duty, delivered the prisoner to the marshal of

another district, where he was tried, sentenced, and imprisoned for a different offense, the term of imprisonment under the first sentence must be computed from the date of such sentence, when it would have commenced had the marshal performed his duty, it not being within the power of a ministerial officer, by any action of his, to suspend the operation of the sentence of a court to as to prevent if from expiring by lapse of time; and, under such circumstances, it must be presumed, in favor of the prisoner, that he would have earned the good time allowed him by law for good conduct. Id. In re Jennings, Supra. Third, the petitioner asserts he is being twice punished for the same offense, this falls within the Fifth Amendment of the Constitution of the United States. The Fifth Amendment provides in part, * * * "Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb * * *". The petitioner asserts double jeopardy attaches after satisfying the judgments No. 11032 and No. 11074 by service of ten years and twenty five days from date of final judgment. The petitioner asserts he was convicted and sentenced on September 17, 1930 for violation of Section 313, 315, 88, and 408 of Title 18 U.S.C. The maximum punishment that could be imposed under the section violated totaled fifteen years. The petitioner asserts he has served over eleven years from date of commitments and judgments as shown by petitioner's "exhibits A and B, respectively." The sentence imposed by the court is in excess of

what could have been imposed under the sections that were violated. The petitioner is now being punished the second time for the same offense. [48]

ARGUMENT

I

A. The petitioner states he was first indicted by the federal gov't and was entitled to have the federal sentence first executed. See petitioner's "exhibits A and B, respectively" for reference as against State proceedings. See, also petitioner's "exhibit D" for reference of State indictment being returned at the July term of Court. The petitioner states, "Federal Court, having first taken jurisdiction of criminal case, was entitled as against State Court subsequently acquiring jurisdiction to have its sentence first executed." Id.

Albori v. U. S. (C. A. A. Cal. 1933) 67 F. (2) 4.

The petitioner states the Federal Court had the petitioner in their custody and should have retained jurisdiction over the petitioner until the case was prosecuted and the judgment satisfied. The Federal and State Court do not exercise concurrent jurisdiction, unless the crime is punishable under both State and Federal Statute. The Federal offenses charged in case No. 11032 and No. 11074, was not punishable under State Statutes, and the State offense charged in case No. 239 was not punishable under Federal Statute. Therefore the State and Federal could not exercise concurrent jurisdiction, and the Court first acquiring criminal jurisdiction should satisfy its judgment to the end.

The case of Albori v. U. S. Supra, controls the case of the petitioner's in respect to the jurisdiction of the Federal Court to prosecute case No. 11032 and No. 11074, before surrendering of the petitioner to State Authorities. The petitioner's plea of jurisdiction is to point out the facts concerning the post-dating of the Federal sentence. Had the Federal Court prosecuted case No. 11032 and No. 11074 and [49] satisfied the judgment thereunder before surrendering the petitioner to State authorities, there would have been no conflict of the State and Federal sentence. The case of Albori v. U. S., Supra, is directly in point with the petitioner's case.

II

A. The petitioner states he was sentenced on September 17, 1930, to terms totaling fifteen years. The judgments and commitments No. 11032 and 11074 provides the date of September 17, 1930. The petitioner states the judgment is the sentence of the Court.

Berman vs. United States, U. S.—, 82—, L. ed.—, 58 S. Ct. 164.

II-B. The petitioner states he was sentenced in the absence of statute and was committed to the discretion of the court. That no statute controlled the beginning of the sentence and therefore the sentence must have expression for the sentenc is the judgment.

Miller v. Aderhold, 288 U. S. 206, 210, 77 L. Ed. 702, 705, 53 S. Ct. 325;

Wagner v. U. S. (C.C.A. 9th) 3 F. (2d) 864; Hill v. U. S. 298, U. S. 460, 464, 80 L. ed. 1283, 56 S. Ct. 760.

The petitioner states the sentence of September 17, 1930 is the judgment of the Court. The judgment provides for the date of Sept. 17, 1930, therefore the judgment is the sentence. Berman v. United States, Supra.

III

A. The petitioner states the measure of punishment is generally set forth in the statute creating and defining the offense. The sentence should be couched in direct, clear, and unambiguous language, admitting of no uncertainty in any of it terms. [50]

U. S. v. Daugherty, 299 U. S. 326, 70 L. ed. 309, 46 St. Ct. 156;

U. S. v. Patterson, 29 F. 775

The petitioner states the words "from date of delivery to the said penitentiary" are ambiguous, as nine years one month and thirteen days elapsed before the petitioner was actually delivered into the custody of the Warden. The petitioner further contends the specification inserted under judgment No. 11032 provides no date, and is silent to the date of October 31, 1939. Therefore the case of U. S. v. Daugherty, Supra, controls the sentence imposed in Case No. 11032. The case of U. S. v. Patterson, supra, is also controlling here in this case. The part of the judgment the trial court refers to as the date when sentence is to begin, contains no date and

contradicts the commitment. The ambiguous construction of the judgment imparts verity when collaterally assailed. Ibid. The judgment of the court contains the date of September 17, 1930, and regardless of the date of delivery the date of judgment is spoken on pronouncement of sentence, and can not be changed by provisions that are uncertain. "In any collateral inquiry, a court will close its ears to a suggestion that the sentence entered in the minutes is something other than the authentic expression of the sentence of the judge." The petitioner states if this court will closely scrutinize the judgment it will clearly show the date of September 17, 1930. The judgment will further disclose there were no provisions made for the date of October 31, 1939. The specification was entered by Clerk of the Court after petitioner had left the court room. And even if the said specification was ruled as the judges instruction, it would still be contrary to the Supreme Court's decision in the (Daugherty case). The petitioner's State sentence did not have a definite release date, therefore Federal Court could not postpone the beginn- **[51]** ing of the sentence to an indefinite date unknown to the court. In the petitioner's case the Federal judge postdated the valid sentence of conviction through twenty-seven terms of court. This seems to overrule the Supreme Court's opinion in the (Daugherty case), it would also overrule the decision in U. S. v. Patterson, Supra. In U. S. v. Daugherty, Supra; and U. S. v. Patterson, Supra, the Court

said "The sentence must be couched in a direct, clear and unambiguous language, admitting of no uncertainty in any of its terms." This would seem to control the petitioner's sentence, and to be held otherwise would be over-ruling the Supreme Court.

U. S. v. Daugherty, Supra

U. S. vs. Patterson, Supra

III.

B. The petitioner states the time of one's sentence begins to run from the date he is received by the Warden of the penitentiary, or from the time he is sentenced as shown by the date of such judgment. See, IV Edition, Atwell Fed. Cr. Laws, P. 174.

Ex parte Lyman, 247 Fed. 611

In Ex parte Lyman, Supra, the court said: "Unless specific provisions are made for a sentence to start at the expiration of a former sentence the sentences will run concurrently. The petitioner states the specification cannot be considered as specific provisions, because the State sentence was an indeterminate sentence, and did not have a definite release date. The State sentence was so indefinite not even the parole board knew what day the petitioner would receive a parole. If the State parole board did not know what date the petitioner would be released, then the Federal Judge could not determine a date for the Federal sentence to start. Therefore the petitioner states his sentence started on Sept. 17, 1930 as shown by the judgments [52]

and commitments. The case of Ex parte Lyman, Supra, is directly in point with the petitioner's case.

The petitioner states the specification inserted by Clerk was not included in sentence passed by judge and is void.

Hill vs. U. S. ex rel. Wampler (PA 1936) 56 S. Ct. 760, 298 U. S. 460, 80 L. ed. 1283

See, §569 and 641 of Title 18 U. S. C. A.

V.

A. The petitioner states the maximum on sentences imposed in Case No. 11032 and No. 11074 have been served and the petitioner is entitled to discharge by Habeas Corpus. The court was without power to impose a sentence to exceed the maximum penalty as provided for by § 313, 315, 88 and 408 of Title 18 U. S. C. The sentence imposed upon the petitioner was not within the power of the court, and petitioner is entitled to relief by Habeas Corpus.

Cardigan v. Biddle, 10 F. (2d) 444.

In Cardigan v. Biddle, supra, the court said: "Where one seeks discharge from confinement after conviction for an offense upon a petition for Habeas Corpus, the sole question presented are whether petitioner was convicted by a court having jurisdiction of his person and the offense, and whether the sentence pronounced was one within the power of the Court." The petitioner states the Court was without power to impose the sentence it did, and the petitioner is entitled to discharge by Habeas Corpus. Cardigan v. Biddle, Supra:

Tullidge v. Biddle, (C.C.A. 8th) 4 F. (2d) 897;

Franklin v. Biddle, (C.C.A. 8th) 5 F. (2d) 19;

Knewell v. Egan, 268 U. S. 442, 445, 45 S. Ct. 522, 69 L. ed. 1036. [53]

V.

B. The petitioner states marshal's failure to comply with commitment did not postpone beginning of sentence. See, petitioner's exhibits "E" jail commitment.

Albori v. U. S., C. C. A. Cal 1933) 67 F. (2d) 4.

See, petitioner's "exhibit A and B, respectively" for date of commitment issued by trial court.

The date of commitment was entered into the records of the court and dated on Sept. 17, 1930. The petitioner states that the case of Albori v. U. S., supra, is directly in point with the petitioner's case.

V.

C. The petitioner cites the case of Smith v. Swope (C. C. A. Wash. 1937) 91 F. (2d) 260; "Where marshal had custody of sentenced prisoner was ordered to deliver him "forthwith" but held prisoner in county jail and surrendered him to State Authorities, prisoner's service of sentence was deemed to begin at time of commitment and custody thereunder, rather than at a date of actual commitment after prisoner's parole by State Au-

thorities." Id See, petitioner's "exhibits F" for verification of State Parole. The petitioner states the case of Smith v. Swope, Supra, is direct in point and controls the petitioner's case. The petitioner was in custody of marshal before and after sentence was imposed and service of sentence started at time of commitment and custody thereunder. Smith v. Swope, Supra. See petitioner's exhibit "E" as reference of being held in county jail.

VI.

A. The petitioner states Federal Court has no authority to suspend indefinitely a valid sentence of conviction and imprisonment.

Campbell v. Aderhold, (D. C. 1929) 36 F. (2d) 366.

Suspension of sentence which is not a probation is void. See § 724 18 USCA. [54]

Hodges v. U. S. (C. C. A. OKLA. 1929) 35 F. (2d) 594.

VII.

A. The petitioner states place of confinement is not part of sentence, therefore the words inserted into body of judgment * * * "from date of delivery to the keeper or Warden of the said penitentiary" * * *, does not provide a date therein for the beginning of sentence on October 31, 1939, and place of confinement is not an important factor inserted into body of judgment.

Cox v. McConnell (C. C. A. Ga. 1935) 80 F. (2d) 258.

VIII.

A. The petitioner states warrant of commitment being final process for carrying judgment into effect is predicated upon the judgment, must be in substantial accord therewith, and cannot vary or contradict the judgment.

Singstack v. Hill, (D. C. Pa. 1936) 16 F. supp. 61.

VIII.

B. The petitioner now directs the court's attention to petitioner's "exhibits A" in reference to the specification inserted under judgment No. 11032, and kindly asks the court to compare the judgment No. 11032 with the commitment No. 11032. The Court will notice the commitment No. 11032 does not provide the specification, and marshal's failure to comply with the commitment cannot be based upon the specifications under the judgment. The petitioner directs the Court's attention to..... judgment No. 11074 in petitioner's "exhibits B" it does not provide a specification and judgment No. 11074 is in substantial accord with the commitment, No. 11074. The sentence imposed in case No. 11074 was ordered to run consecutively with the sentence in case No. 11032. In view of the fact that the sentence imposed in case No. 11074 was imposed after the sentence in case No. 11032, and said judgment No. 11074 did not provide a *speci-* against the [55] petitioner, the sentence would start to run on September 17, 1930. In case No. 11074 no provisions were made for the date of.....

delivery and no specification interrupts the commencement of the sentence, therefore the sentence started the day it was imposed. The petitioner states the sentence was aggregated in both cases and the sentence imposed in case No. 11074 was last imposed, therefore the aggregation was based upon the sentence imposed in case No. 11074. The five years sentence imposed in case No. 11074 would control the sentence in case No. 11032 on aggregation. On aggregation the sentence would start from the date as provided for in the judgment and commitment. The only date in case No. 11074 is of September 17, 1930, and the petitioner directs the courts attention to case No. 11074 to observe the *the* date of judgment and commitment. Therefore the petitioner would be entitled to have the credit for the time served from date of commitment on September 17, 1930. Of course the petitioner could not support the plea until he had entered upon service of the sentence. But after the petitioner had reached the Penitentiary and had been confined therein, the term of his imprisonment would be estimated to begin from the date of sentence. The petitioner states there is not a case in the history of the Federal Courts that can be used to support the trial court's contentions. The trial court imposed judgment and sentence in the absence of statute and the judgment of the court was a final judgment, therefore the sentence would start to run from the date of judgment. To be held otherwise would establish a law, then, not authorized by Con-

gress. It would be over-ruling the appellate court's decisions in various cases, and would be contrary to the Supreme Court's opinions in cases cited herein. The trial court's attempt to make the petitioner serve nineteen years, [56] two months and twelve days on a fifteen year sentence is not within the meaning of law, and is in contravention of § 313, 315, 88 and 408 of the Code of laws of the United States.

IX.

A. The petitioner states in the case of Rohr v. Hudspeth, 105 F. (2d) 747, "The petitioner Armond J. Rohr was not under State sentence at the time of his conviction by the Federal District Court. In the (Rohr case) the delay of delivery to the Federal Penitentiary was due to State Court proceedings. In the (Rohr Case) The Federal court convicted the petitioner and surrendered the petitioner to State Authorities for trial. The State Authorities failed to obtain a conviction in the (Rohr case) and left the State indictment to be reinsated. The State Authorities turned the petitioner Rohr back to Federal Authorities and the delivery in the (Rohr case) was on January 16, 1936. In the (Rohr case) four months and two days elapsed before the petitioner was delivered to the Penitentiary." The petitioner directs the Court's attention to the (Rohr case) in which Justice Lewis, speaking for the court said: (3) "A different situation might be presented if the marshal had had exclusive custody on the date of sen-

tence, had failed to carry out the judgment and orders of the Federal Court, and had surrendered him to the State authorities. See Smith v. Swope, 9 Cir. 91 F. (2d) 260''. In the petitioner's case the Federal marshal had exclusive custody on the date of sentence and held petitioner in county jail before surrendering petitioner to State authorities. The marshal failed to execute commitment, and therefore petitioner's sentence started from time of commitment and custody thereunder, rather than at date of actual commitment after petitioner was paroled by State authorities. Smith v. Swope, Supra. See Rohr v. Hudspeth, [57] 105 F. (2d) 747, 750. See also petitioner's exhibits "E" jail commitment, and petitioner's "exhibit F" of State Parole, and petitioner's "exhibits A and B" for date of commitment issued by District Court. The case of Smith v. Swope, Supra, would control the case of petitioner's, and to be considered otherwise would be overruling the Circuit Court's opinion in the (Smith Case). Smith v. Swope, Supra.

X.

A. The petitioner states in Zerbst v. McPike, 5 Cir. 97 F. (2d) 253, "The Federal Court convicted McPike and passed sentence, and State Authorities returned McPike to jail to await trial and convicted and sentenced McPike to a State Prison. In the (McPike) case the Louisiana officers delivered McPike to the United States Court (District) for trial. He was sentenced to three years, with

no time fixed for commencement, was imposed. The State Authorities returned McPike to jail and he was convicted on a State charge and sentenced to three to five years in the State Penitentiary. Upon discharge from the State Penitentiary McPike was committed to the Federal Penitentiary. Upon petition for Writ of habeas corpus McPike obtained a judgment of discharge, which was reversed on appeal. The court held that McPike's federal sentence had not expired upon his release from the States Penitentiary, because under the statute his federal sentence would begin to run only from the date on which he was received at the Federal Penitentiary. When he was returned to the jail by the State officers it was to await trial in the State Court and not to await transportation to the federal penientiary. Here in the petitioner's case a different situation is presented, where the petitioner was undergoing a State sentence prior to the trial date of September 17, 1930. The petitioner was convicted by a State [58] Court and sentenced to a term of not less than one year and no more than natural life. Fifty-two days after the petitioner was incarcerated in the State Penitentiary under a sentence of one to life, the federal authorities arrested the petitioner and confined him in the Vermilion County Jail, See petitioner's exhibits "E", jail commitment. The petitioner had been incarcerated in the State Penitentiary July 25, 1930, and on Sept. 14, 1930, the federal authorities arrested petitioner and confined him in the Vermilion County

Jail to await trial on charges No. 11032 and No. 11074. On arraignment, petitioner pleaded not guilty to charges No. 11032 & 11074, on September 16, 1930. Petitioner states the trial date was set for Sept. 17, 1930, and petitioner was convicted in case No. 11032. The petitioner withdrew his plea of not guilty in case No. 11074, and the court immediately passed sentence in both cases. The petitioner states after he received sentence on Sept. 17, 1930, he was confined in the Vermilion County Jail. That on Sept. 18, 1930, the marshal surrendered the petitioner back to state prison authorities. The marshal failed to execute writ of commitments, to carry judgments No. 11032 and 11074 into effect. Here in the petitioner's case is the same question of law that was settled in Smith v. Swope, Supra. In the Smith case, the Marshal failed to comply with commitment and the court held that the sentence started at time of commitment and custody thereunder, rather than at a date of parole by State authorities. Here in petitioner's case is the same question, and the clerk of court attempted to stop the valid judgment of conviction by inserting a specification under the original judgment of the court. The specification was entered after the marshal failed to carry judgment into effect. The petitioner states his sentence started on Sept. 17, 1930 as shown by the commitments and judgments, Ex parte Lyman, 247 Fed. 611. Petitioner further states his term of [59] imprisonment started from date of commitment and custody there-

under, rather than at a date of parole by State authorities. Smith v. Swope, supra; The case of Smith v. Swope, is direct in point with the petitioner's case and has controlling effect to time when sentence began to run. Smith v. Swope, supra.

XI.

A. The petitioner cites the case in re Jennings, (C. C. Mo. 1902) 118 F.-31, 479, 482. "Where an execution of sentence has not been stayed by an appeal, the term of imprisonment given by such sentence should be computed from the date of sentence, and it must be presumed in favor of the prisoner that he would have earned his allowance of time for good behavior given by this section, as it is not material that during a portion of the time during which the prisoner has been confined, he was held ostensibly for an offense other than that for which he was originally convicted, since in the eye of the law, he has all the time been serving out the sentence that was imposed upon him. "Id. In in re Jennings, Supra; "The petitioner had been sentenced by a federal court to five years imprisonment in a penitentiary, in Kansas. The marshal, instead of conveying him there, surrendered him to the marshal of another district, where he was tried for another crime, convicted, and sentenced for life. He was imprisoned in Ohio. Five years later he was pardoned for this second offense. Held that he had served his first sentence by his term of imprisonment in Ohio." Id.

The petitioner states the case in re Jennings, Supra, is not only controlling here but it is in parallel with the petitioner's case. In the (Jennings case) the appellate court held the federal sentence was served by his imprisonment in the State Penitentiary. Here in the case of the petitioner's is a question on law that was settled in the (Jennings case) [60] many years ago. Here in the petitioner's case is a question of law that falls within the ratio of "Public 170 Act of Congress 1902". This Act (supra) did not provide for the beginning of a sentence imposed by the district courts. The petitioner was sentenced in the absence of statute and the court could not suspend indefinitely a valid sentence. See section 724—18 U.S.C.A.— here the petitioner was sentenced to a State Prison on a sentence so indefinite not even the Parole Board knew what date the petitioner would be released. The (Jennings case) was of the same nature and there a pardon was granted, and the appellate court held the Federal sentence was served by the service of years spent in the Ohio State Prison. Here the petitioner was paroled on his State sentence, and was taken into custody by Federal authorities (marshal) on judgments and commitments dated on September 17, 1930. Here the petitioner was forced to start his sentence on October 31, 1939, and was not given credit for time served from date of judgment. The circuit court ruled in the (Jennings case) he had served his federal sentence while incarcerated in the Ohio

State Penitentiary. Here in the petitioner's case is the same question of law, direct in point with the (Jennings case) and to be considered otherwise would be overruling the Circuit Court's decision handed down in the (Jennings case). This case was in the absence of statute, so was the petitioner's case in the absence of statute, there in the (Jennings case) the marshal failed to comply with the commitment, here in petitioner's case the marshal failed to comply with the commitment, and the circuit court held in the (Jennings case) marshal's failure to comply with commitment did not postpone beginning of sentence. Tnere in the (Jennings case) the court said, "the law comtemplates that. after a prisoner has been [61] tried and sentenced, he will be committed at once to the custody of the prison officials where the sentence is to be executed. He passes by virtue of the sentence into a custody different from that of the court before which he was convicted. Here in the petitioner's case is the same question of law that was settled in the (Jennings case) and the petitioner states he passed by virtue of the sentence into a custody different from that of the court before which he was convicted. There in the (Jennings case) the court held the sentence was served by the number of years spent in the Ohio State Penitentiary. Here in the petitioner's case is the same question that effects the sentence imposed by a District Court, and that here in the case of the petitioner's is the same laws that were in effect when the (Jennings case) was decided. The petitioner states the (Jen-

nings case was tried prior to Public 170, 1902; and in 1902 Congress passed a law known as Public 170 effecting prisoners sentenced prior to its enactment. The petitioner states that at the time of his conviction and sentence the law of 1902 was still in effect. The Act of Congress, Public 170, 1902, had been amended several times, but the amendments did not destroy the law which controlled the allowance of good time as provided therein. The petitioner states the law under which he was convicted did not have a statute providing for the commencement of a sentence of imprisonment. The petitioner was sentenced in the absence of statute and the trial court was without power to sentence beyond its jurisdiction. The trial court could not contend that the judgment entered upon its record was something other than the sentence of the court. The sentence of September 17, 1930, was not stayed by an appeal, and after sentence was imposed the petitioner passed into a custody other than the court. In re Jennings, Supra. [62]

XII

A. The petitioner states in the case of the petitioner's the Federal and State Court could not form a union to loan and parole the petitioner back and forth as they should see fit. The petitioner states the Federal has *arraigned* the petitioner's sentence so the petitioner will be eligible for conditional release on November 25, 1949. The petitioner was sentenced prior to the conditional release law, and is not subject to the laws passed (June 29, 1932,

C. 310 §3, 47 Stat. 381). The records of the respondent shows that the petitioner was sentenced to the United States Penitentiary, Leavenworth, Kansas, on September 17, 1930. The records of the respondent further shows the petitioner will receive a conditional release on Nov. 25, 1949. The petitioner states the records of the respondent further shows the petitioner will be subject to discharge on October 31, 1954. Petitioner states he was sentenced prior to the conditional release law and is subject to discharge after service of ten years and twenty five days from date of final judgment entered upon the records of the court. In re Jennings, supra. The petitioner is not subject to conditional release, see Henratty v. Zerbst (D.C. Kan. 1934) 9 F. Supp. 230, appeal dism. (C.C.A. 1935) 77 F. (2d) 1023; U. S. ex rel. Anderson v. Anderson (C.C.A. Min. 1935) 76 F. (2d) 375, aff (D.C. 1934) 8 F. Supp. 812. The petitioner states the respondent received the petitioner on a commitment and judgment dated Sept. 17, 1930. The respondent has no authority to start a sentence, and the marshal's return cannot be considered the date when sentence started to run. See in re Jennings, Supra. [63]

XIII

A. The petitioner states after the expiration of the term of court in which he was convicted the trial court had no further control over the valid judgment or sentence which it had rendered, and cannot vacate, reform, or change it or pronounce a new sentence.

Ex parte Friday, 43 Fed. 916; U.S. v. Malone, 9 Federal, 897;

U.S. v. Pile, 130 U.S., 280; U.S. v. Patterson, 29 Fed. 775.

The trial court declared the sentence of September 17, 1930, a valid judgment and could not post-date the sentence to a date unknown to the court. The State prison sentence was so indefinite the parole board did not know what date the petitioner would be paroled. Therefore the petitioner concludes the sentence of Sept. 17, 1930 is the judgment of the court. The judgments and commitments provides for the date of Sept. 17, 1930, and the judgment is the sentence of the Court. Berman v. United States, Supra.

The court cannot vacate, reform or change the date of judgment or pronounce a new sentence. Ex parte Friday, supra, U.S. v. Malone, Supra, U.S. v. Pile, supra.

XIII

B. The petitioner states in the case of Stevens v. McClaughry, 207 Fed. 18, Circuit Judge Sanborn for the court of appeals for the eighth circuit, held that one who is being restrained of his liberty for many years by virtue of the judgment of a Federal Court which is beyond its jurisdiction and void, is not barred from a release therefrom by a writ of habeas corpus by the fact that he might have secured relief by a writ of error but failed to apply for it until it was too late. An habeas corpus may be used to liberate one who is being restrained of

his liberty by virtue of the judgment of [64] the Federal Court beyond its jurisdiction and therefore void. Stevens v. McCloughry, 207 Fed. 18.

The petitioner states he is being held on judgments that were void on October 12, 1940 and he is entitled to discharge by habeas corpus. Stevens v. McCloughry, supra. The petitioner states he was notified by the trial court that the sentence had begun and therefore forfeited his rights for an appeal. The petitioner states he was under a State sentence at the time Federal sentence was imposed, and if the Federal sentence was in operation while the petitioner was serving his state sentence it would not be necessary to appeal the conviction. Therefore the sentence of Sept. 17, 1930, is void and the petitioner is entitled to release by habeas corpus. Stevens v. McCloughry, supra, See IV Edition, Atwell Fed. Cr. Lars § 34 A. P. 179, 180.

XIII

C. The petitioner states that twenty seven terms of court expired before the marshal executed writ of commitment. The trial court could not reform, or change it or pronounce a new sentence. U.S. v. Malone, Supra; Ex parte Friday, supra; U.S. v. Pile, supra; U.S. v. Patterson, Supra. The court could not declare the valid sentence of conviction to start at a date unknown to the court. The trial Court declared the judgment of Sept. 17, 1930, a valid sentence and could not postpone the sentence through twenty seven terms of court. The trial court did not hesitate in passing of judgment and

sentence and after the sentence had begun to run, the trial court could not stop the sentence after the term of court had expired in which the petitioner was convicted. The specification inserted under the judgment by the clerk of the Court would not stop a valid judgment or sentence. And even if such a specification was ordered by the trial judge, the [65] date provided in the body of the judgment would control the sentence. The specification consists of words without expression which does not provide a date, and the commitment is silent to the said specification. Therefore the specification would not control the sentence as it is to uncertain. U.S. v. Daugherty, supra; U.S. v. Patterson, Supra. The specifications shows the Federal sentence shall begin upon the expiration of the sentence the petitioner was serving in the Southern Illinois State Penitentiary. The State sentence did not have an expiration date and has not as yet expired. The trial court could not direct the sentence of Sept. 17, 1930 to start upon the expiration of the State sentence, as the State sentence did not have an expiration date. The trial court did not have power to postdate the valid judgment through twenty seven terms of court. The petitioner states the time when sentence begun under judgment No. 11032 and No. 11074, was on September 17, 1930, as shown by the date therein. If the sentence of Sept. 17, 1930 is not the sentence of the court as shown by the date of the judgment, the judgment would have been void for want of power to sentence.

XIV

A. The petitioner states he has satisfied judgments No. 11032 and No. 11074, and is being held in violation of the Fifth Amendment of the Constitution of the United States. The petitioner states his plea of double jeopardy is not based on being twice convicted for the same offense, or the jurisdiction of the trial court to prosecute the offense, but the question presented is the trial court was without power to pass the sentence it did. Petitioner states the trial court was without authority to impose the sentence, and habeas corpus lies to inquire into the judgment and sentence under which the petitioner is held. In the case [66] of Ex parte Lang, 18 Wall. 163, 21 L.Ed. 872, the court said: "It was not a question as the Court's power to hear and determine the case, it was held the court was without power to give the judgment it did. Here in the case of the petitioner's is the same question of the Court's power to sentence the petitioner in excess of what could be imposed under § 313, 315, 88 and 408 of Title 18, U.S.C. The Court did not have power to sentence the petitioner to exceed the maximum penalty that could have been given under the Statutes that were violated. The judgments of the court provided the date of September 17, 1930, and are now void. The petitioner states the trial court was without power to give the judgment it did. Ex parte Lang, Supra. The Fifth Amendment of the Constitution, provides, * * * "Nor shall any person be subject for the same offense to

be twice put in jeopardy of life or limb * * *''. In re Coy, 127 U.S. 731, 758, 8 St.Ct. 1263, 32 L.Ed. 274, that the power of Congress to pass a statute under which a prisoner is held in custody may be inquired under a writ of habeas corpus as affecting the jurisdiction of the court which ordered his imprisonment; and the court speaking by Mr. Justice Miller, adds,: ''And if their want of power appears on the face of the record of his condemnation, whether in the indictment or elsewhere, the court which has authority to issue the Writ is bound to release him. The petitioner states the want of power is based upon the court's own judgment, and to hold the petitioner on a sentence that is in excess of the maximum that could be imposed under statute, constitutes double jeopardy. The petitioner states the want of power appears on the face of the judgments, No. 11032 and 11074 and the petitioner is entitled to discharge by Habeas Corpus. In re Coy, supra. The petitioner states the court was without authority to give the judgment it did, Ex parte Nielsen, 131 U.S. 176, 9 St. Ct. 672, 33 L.Ed. 118, and cases therein cited. III Edition Mikell Cr. [67] Law and Proc. Ch. 14 Page 290, 291, 292.

CONCLUSIONS OF LAW

1. The petitioner is being held beyond the maximum penalty regulated by statute. The sentence imposed upon the petitioner was not within the power of the court.

2. The petitioner is held on judgments that were void on October 12, 1940. The sentence of Sept. 17, 1930, is the judgment of the court and the date of Sept. 17, 1930 is provided in the body of the judgment.

3. The date of October 31, 1939 cannot be considered the date when sentence began, as no provisions were made for this date.

4. The specification inserted under judgment No. 11032 is contrary to order of commitment. The specification provides, the Federal sentence shall begin upon the expiration of the State sentence and the State sentence has no definite expiration date. The State sentence has not as yet expired and the petitioner will continue upon parole after release from Federal sentence.

5. The petitioner is being twice punished for the same offense and is held a prisoner in violation of the Fifth Amendment of the U.S. Constitution.

The petitioner is illegally and unlawfully restrained of his liberty, prays that a writ of Habeas Corpus issue, directed to the respondent herein named, to bring and have your petitioner before Your Honor, instanter, together with the true cause of his detention, to the end that due inquiry may be had, and that Your Honor may proceed in a summary way to determine the facts in this case and the legality of the imprisonment of the said petitioner, restraint, and detention, and further, that an order issue from under the seal of Your Honor, discharging your petitioner from further [68] ille-

gal an unlawful restraint and detention, and your petitioner will ever pray.

Respectfully Submitted,

(Signed) CECIL WRIGHT,
Petitioner.

State of California,
County of San Francisco—ss.

Personally appeared before me, Cecil Wright, who, being duly sworn, deposes and says he has read the foregoing attached petition and he knows the contents thereof, and the allegations therein set forth are true except as to such matters as are stated upon information and belief, and these he verily believes to be true, and that he is entitled to the relief therein sought.

(Signed) CECIL WRIGHT,
Petitioner-Affiant.

Subscribed and sworn to before me this 23 day of December A.D. 1941.

(Signed) E. J. MILLER,
Associate Warden, U. S. Penitentiary, Alcatraz, California.

[Seal]

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths.

Filed in the District Court:
.....A.D. 1941.....

[69]

579 "EXHIBIT D" DEC—6 Rec'd R.R.B.

State of Illinois,
Clark County—ss.

At a regular Term of the Clark County Circuit Court, begun and holden at the Courthouse, in the City of Marshall, in and for the County of Clark, on Monday, the 14th day of July, A.D. 1930, and on the sixth day of said Term, being the 25th day of July A.D.: 1930.

Present—Hon. S. Murray Clark, Judge.
Russell L. Riley, Clerk.
Victor C. Miller, State Attorney.
Harry O. Coldren, Sheriff.
Attest..... Clerk

PETITIONER'S "EXHIBITS D."

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ROBBERY

THE PEOPLOE vs. ROBERT RAYMOND, MARK BOWLES, CECIL WRIGHT, MONTE CHRISTE and JOSEPH HARTMAN.

(The paragraph concerning Cecil Wright is as Follows)

And now again on this day comes the People of the State of Illinois by Victor C. Miller State's Attorney and the said Defendant Cecil Wright in

his own proper person as well as by his Attorney Grendel F. Bennett also comes and issues being joined it is the order of the Court that a jury come Whereupon come the jurors of a jury of Twelve good and lawful men, to-wit: R. M. Bennet, Newton Brosman, J. B. Young, Raymond Lindley, Ed Cunningham, Fred McFarland, Bird Thompson, Marion Bartman, Cabot Hill, Wl. Ellington, B. F. Setzer and Wm. Cline who being duly selected, tried and sworn proceed to try said cause and the jury having heard the opening statements, all the evidence adduced [70] the argument of counsel together with the instructions of the Court, retire in charge of a sworn officer to consider of their verdict, and now comes again the Jury in open Court and for their verdict say: We the Jury find the defendant Cecil Wright guilty of Robbery in manner and form as charged in the indictment and we further find from the evidence that at the time of the commission of said robbery the defendant was armed with a dangerous weapon, to-wit: with a colts 45 Automatic.

And we further find from the evidence that the said defendant, Cecil (Tuck) Wright is about the age of twenty four (24) years.

And now comes the defendant, Cecil Wright, into open Court by his counsel Grendel F. Bennett as well as in his own proper person and makes motion for a new trial and the Court being fully advised in the premises it is the Order of the Court motion for a new trial be overruled and denied and now comes again the defendant Cecil Wright by his

counsel and makes motion in arrest of Judgment and it is the Order of the Court motion be denied and Defendant thereupon excepts.

Now again on this day come the said People of the State of Illinois, by Victor C. Miller, State's Attorney and the said Defendant, Cecil Wright in his own proper person, as well as by his counsel, Grendel F. Bennett, also come and now neither the said defendant, Cecil Wright, nor Grendel F. Bennett, his counsel for him, saying anything further why the Judgment of the Court should not now be pronounced against him on the verdict of guilty of Robbery in manner and form as charged in the Indictment heretofore rendered in this cause. [71]

Therefore, it is Ordered and adjudged by the Court, that the said defendant, Cecil Wright, be taken from the Bar of this Court to the Common jail of Clark County, from whence he came, and from thence by the Sheriff of said County, to the Penintentiary, of this State at Menard, Illinois and be delivered to the Warden or Keeper of said Penintentiary, and the said Warden or Keeper is hereby required and commanded to take the body of said defendant Cecil Wright and confine him in said Penintentiary in safe and secure custody, or on parole, from and after delivery hereof and until discharged by the Department of Public Welfare as authorized and directed by law, provided such term of imprisonment shall not exceed the maximum term nor less than the minimum term provided by law for the crime for which said defendant was

convicted and sentenced, making allowance for good time as provided by law.

It is further Ordered and Adjudged that the said Defendant pay 1/5 of the costs of this prosecution, and that fee bills be issues therefor.

CERTIFICATE

State of Illinois,
County of Clark—ss.

I, Ray Burkybile, Clerk of the Circuit Court and Ex-Officio Recorder in and for said County, in the State aforesaid, do hereby certify that I am the keeper of the records, files and seal of said Court, and that said Court is a court of record, having a duly elected, qualified and acting Clerk and a seal; said court has original jurisdiction in all matters of law and equity, and as Recorder I am the custodian of the records and files of the Recorder's Office. I do hereby certify that the foregoing is a true and complete [72] copy of Criminal Court Record 4 at page 339 and 340, as the same appears from the records and files now in this office remaining.

In Testimony Whereof, I have hereunto set my hand and affixed the Official Seal of said Court, at my office in Marshall, Illinois, this 28 day of November, A.D. 1941.

(Signed) RAY BIRKYBILE,
[Seal] Clerk of the Circuit Court.

[73]

PETITIONER'S "EXHIBITS C" AND "EXHIBITS E".

F. W. Ward — Phones (County House 3700
Sheriff — County Jail 153

Deputies
Merrill J. Wayne
J. P. Ovall, Jr.
J. Ross Prather
R. P. Meade

579

Office of Sheriff
Vermilion County
Danville, Illinois

November 29-1941

Mr. Cecil Wright
#579-P.M.B.
Alcatraz, Calif.

Dear Mr. Wright

Your Letter of November 23-41 Was referred to me by the U.S. District Clerk, Mr. D. H. Reed.

"Exhibits C"—Our Records Show that you were confined in the Ver. Co. Jail From June 19-1930 to July 23-1930.

"Exhibits E"—Our Records Also Show that on Sept. 14th-1930 you were arrested and Was confined here until Sept. 18-1930.

If you wish a Certified copy of Court Records The Clerk's Office will Be Glad to furnish same to you.

Thanking you.

Assure you of our Cooperation.

Sincerely Yours,

(Signed) R. A. MERLIE,

Jailer, Ver. Co. Jail, Danville, Ill. [74]

PETITIONER'S "EXHIBIT F."

579

Members of the Division
W. C. Jones, Superintendent
Frank D. Whipp
Milton H. Summers
William J. Smith Jr.
Paul L. Schroeder, M.D.
James G. Gullett, Assistant Superintendent.
George W. Schwaner, Jr., Secretary.
Robert B. Phillips, Chief Clerk.

State of Illinois
Dwight H. Green, Governor
Department of Public Safety
T. P. Sullivan, Director
Division of Correction
Springfield

October 30, 1941.

To: Cecil Wright, #15386-Menard
#579 P.M.B.
Alcatraz, California

In reply to your letter of October 21, would advise that the file in your case discloses that under date of October 9, 1939, the following order was entered in your case:

"Paroled on Mittimi Nos. 4984 and 239. Effective when the Federal authorities come for him. If not taken case to be referred back to the Board."

The record further shows that under date of October 31, 1939, you were released to the Federal authorities. The effect of this order and the parole is that upon your release from the institution in which you are now serving, you will be placed on parole by the Division of Supervision of Parolees of the State of Illinois.

I would suggest that thirty days prior to your release date that you contact the parole officer at Menard Branch of the Illinois State Penitentiary, advising him of your release date and he will see to it that you are supplied with the necessary documents for your parole period. [75]

Due to your record you will be required to serve a minimum of four years on parole, being a "two time loser."

Trusting the information given you proves helpful, I am

Very truly yours,

(Signed) ROBERT B. PHILLIPS,
Chief Clerk.

RBP:EC
cc. J. L. Lawder
Parole Officer
Menard

[Endorsed] Filed Jan-8 1942. Walter B. Maling, Clerk. [76]

CERTIFICATE OF CLERK, U. S. DISTRICT COURT TO SUPPLEMENTAL RECORD ON APPEAL

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing 77 pages, numbered from 1 to 77 inclusive, to be a full, true and correct copy of the Petition for Writ of Habeas Corpus in Case No. 23581 S, Cecil Wright, vs. James A. Johnston, and the Petition for Writ of Habeas Corpus, in Case No. 23611 S, Cecil Wright, vs. James A. Johnston, as designated in the Order Granting Motion to Include Additional Documents in Transcript of Record, and as the same remain on file and of record in the office of the Clerk of said Court, and that the same constitute the supplemental record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing supplemental transcript of record is $29.25; that the said amount has been charged against the United States.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 30th day of January, A.D. 1943.

WALTER B. MALING,
Clerk.
By M. E. VAN BUREN,
Deputy Clerk. [77]

[Endorsed]: No. 10331. United States Circuit Court of Appeals for the Ninth Circuit. James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, Appellant, vs. Cecil Wright, Appellee. Supplemental Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed February 2, 1943.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.